IN THE HIGH COURT FOR THE STATE OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 18 of 2001
Date of Decision 27.9.2006

Smt. Bimla Devi.

...Appellant

Versus

Madan Lal and others

..Respondents.

Coram: Hon'ble Mr. Justice Vinod K. Sharma.

Present: Mr. L.N. Verma, Advocate
for the appellant.

Mr. Sanjiv Gupta, Advocate
for respondent Nos.1 to 20.

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Vinod K. Sharma, J.(Oral)

The present appeal filed against the order passed by the learned Additional District Judge, Sirsa vide which appeal filed by respondent Nos. 1 to 20 was allowed and the case was sent back to trial Court with a direction to proceed with the suit in accordance with law. Plaintiff-respondent Nos. 1 to 20 had filed the suit for declaration to the effect that the plaintiffs were the owners in possession of the land in dispute in the following manner:

"a) Plaintiffs no. 1 and 2 Madan Lal and Vijay Kumar are the owners in possession in equal shares of the 1/6 share;

b) Plaintiffs no. 3,4, & 5 Kasturi Lal, Joginder Kumar and Telu Ram, are the owners in possession in equal shares of the 1/6 share;

c) Plaintiffs no. 6 to 9 Hans Raj, Pawan Kumar, Krishan Kumar and Subhash Chand are the owners in possession in equal shares of the 1/6 share;

d) Plaintiffs no. 10 to 12, Ved Parkash, Lajpat Rai and

Banwari Lal are the owners in possession in equal shares of the 1/12 share;

e) *Bhushan Kumar plaintiff no. 13 is the owner in possession of 1/12 share;*

f) *Plaintiff No. 14 Naurang Mal (now Lachhman Dass, his legal representative) is the owner in possession of 1/6 share;*

g) *Plaintiff No. 15 Ram Lal is the owner in possession of 1/12 share;*

h) *Plaintiffs no. 16 (now his legal representatives) and 17 are the owners in possession in equal shares of the 1/12 share;*

Out of the 1/5 share of total land measuring 164 kanals 0 marlas, comprised in:

i) *Khewat no. 1 khatuni no. 1, Rect. No. 69 killa no. 3(8-0) 4(8-0), 7(8-0), 8(8-0), 13(8-0), 14(8-0), 17(8-0), 18(8-0) 19 (8-0) 22(8-0), 23(8-0), 24(8-0) Rect. No. 74 killa no. 2(8-0), 3(8-0), 4/1(4-0), Rect. no. 144 Killa no. 2(8-0), Rect. No. 144 killa no. 3(8-0), 8(8-0), 9(8-0), 12(8-0), 13(8-0), situated in village Sainpal, Tehsil and District Sirsa, as per jamabandi for the year 1966-67 to 1986-87 and mutation no. 389. And the sale-deed bearing Registration no. 558 dated 22.5.1971 got executed duly signed and registered by the defendant Smt. Bimla Devi, in favour of Shri Munshi Ram (now deceased) father of plaintiffs no. 1 and 2, Sh. Bali Ram (now deceased) father of plaintiffs no. 3 to 5; Sh. Kundal Lal (now deceased) father of plaintiffs no. 6 to 9; Sh. Lahori Mal (now deceased) father of plaintiffs no. 10 to 12, Sh. Chiranji Mal (now deceased) father of plaintiff no. 13 and S/Shri Naurang Mal, Ram Lal Radha Krishan and Sohan Lal plaintiffs no. 14 to 17, to the extent of shares, mentioned above, before the office of Sub Registrar, Sirsa in respect of the land measuring 32 kanals 16 marlas, 1/5 share of land measuring 164 kanals 0 marla comprised in :*

j) Rect. No. 144 killa nos. 2(8-0), 3(8-0), 8(8-0), 13(8-0), 14(8-0), 17(8-0), 18(8-0) 19(8-0) 22(8-0), 23(8-0), 24(8-0) Rect. no. 73 killa no. 2(8-0), 3(8-0) Rect. no. 63 killa no. 3(8-0), 4(8-0), 7(8-0), 8(8-0), 12(8-0), 13(8-0) situated in village Sainpal, Tehsil and District Sirsa.

In the place of the land measuring 164 kanals 0 marla, comprised as detailed above in sub para (1) by way of mutual mistake, is wrong, incorrect, against law and facts and is liable to be rectified and the revenue record entries of the suit land are liable to be corrected accordingly; and the plaintiffs are entitled to get a mutation to this effect, entered and sanctioned in their names respectively, pertaining to the land measuring 164 kanals 0 marlas, as detailed in sub para (1) above, and the judgment and decree dated 13.3.1995 passed by Sh. Jagdev Singh, Sub Judge 1st Class, Dabwali in civil suit no. 70 dated 27.1.1995 for declaration titled as Gurdev Singh Versus Smt. Bimla Devi, is the result of collusion between the defendants intersee. Based on fraud, mis-representation, concealment of facts, with the object to defeat the rights of the plaintiffs in suit already pending adjudication and is, therefore, void, abinitio qua the rights of the plaintiffs and liable to be ignored. And a consequential relief for permanent injunction, restraining the defendants from interfering into the ownership and cultivating possession of the plaintiffs over the suit land, by way of sale, mortgage, transfer or alienation of the suit land or any part thereof, in any manner, in any capacity on the basis of evidence of every description oral as well as documentary."

The claim in the suit was that Bimla Devi who was owner in possession of 164 kanals of land has sold the land to the plaintiff-

respondent Nos. 1 to 20 vide sale deed dated 22.5.1971. In the said sale deed sale was shown to be 32 kanals 16 marlas of land. The predecessor of the plaintiff-respondent Nos. 1 to 20 had filed a suit on 13.3.1975 for rectification of the sale deed on the ground that Bimal Devi in fact has sold the entire land measuring 164 kanals and not 32 kanals 16 marlas as mentioned in the sale deed. The said suit was dismissed in default under Order 9 Rule 8 of the Code of Civil Procedure on 27.5.1976. After dismissal of the suit Smt. Bimla Devi suffered a decree in favour of Gurdev Singh qua 164 kanals of land including the land of 32 kanals 16 marlas sold by her vide sale deed dated 22.5.1971. The appellant herein moved an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the plea that the present suit had time barred as they had challenged the sale deed dated 22.5.1971 and further on the ground that once earlier suit was dismissed under Order 9 Rule 8 of the Code of Civil Procedure the remedy open to the plaintiff-respondent Nos. 1 to 20 was to get the dismissal and set aside the suit and no fresh suit could be filed on the same cause of action in view of the provision of Order 9 Rule 9 CPC. This contention of the appellant was accepted and the learned trial Court was pleased to reject the plaint under Order 7 Rule 11 CPC . The plaintiffs-respondents No. 1 to 20 challenged the said decree by way of appeal. The learned appellate Court held that the relief claimed by the plaintiffs-respondent Nos. 1 to 20 claiming 164 kanals was rightly rejected, as the claim was time barred as well as barred under Order 9 Rule 9 CPC. However, the learned lower appellate Court came to the conclusion that in the suit filed by the plaintiff-respondent Nos. 1 to 20 challenged was also to the judgment and decree dated 13.3.1995 passed in favour of Gurdev Singh

by Bimla Devi which included the land measuring 32 kanals 16 marlas. The learned lower appellate Court came to the conclusion that it was not open to the learned trial Court to reject that part of the plaint as under Order 7 Rule 11 CPC that part was not covered either by way of limitation or under provision of Order 9 Rule 9 CPC and accordingly remanded the case back to the learned trial Court for decision on merits.

Learned counsel for the appellant has vehemently argued that the order passed by the learned lower appellate Court cannot be sustained as the plaintiff-respondent Nos. 1 to 20 were entitled to maintain the second suit on the same cause of action and passing of a subsequent decree in favour of Gurdev Singh did not give any cause of action.

I have heard the learned counsel for the appellant. I do not find any force in the contention raised by Mr. L.N. Verma, Advocate. The learned lower appellate Court has accepted the contention qua the relief which was claimed by plaintiff-respondent Nos. 1 to 20 in the previous suit and the case has been remanded back only qua land measuring 32 kanals 16 marlas, which was sold to plaintiffs-respondent Nos. 1 to 20 by way of sale deed dated 22.5.1971. It was also part of a subsequent decree. Thus, the plaintiffs -respondent Nos. 1 to 20 had a fresh cause of action to challenge the said decree at least qua land 32 kanals 16 marlas. There is no illegality in the impugned order, which may call for interference by this Court.

Dismissed.

September 27, 2006 **(Vinod K. Sharma)**
gsv **Judge**